

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.7617 OF 2003

Shri Shivaji P. Raje & Anr. ...Petitioners.
Vs.
State of Maharashtra. ...Respondent.

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Mr. P. M. Pradhan with Mr. N.V. Bandiwadekar for the Petitioners.
Mr. V.P. Malwankar for Respondent No.1.

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**CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.**

April 18, 2006.

P.C. (Per Dr. D.Y. Chandrachud, J.):

The Petitioners have challenged a judgment of the Maharashtra Administrative Tribunal dated 30th March 2001. The claim of the Petitioners before the Tribunal was to the effect that persons working in the clerical cadre in the Department of Agriculture of the State Government be paid salary in the pay scale of Rs.1200-2040 with effect from 1st January 1986 in view of the fact that persons working as Tracers in the said department were granted that pay scale. The First Petitioner is a clerk working in the Department of Agriculture while the Second Petitioner is an

Association representing staff engaged in the Clerical Cadre of the said Department of the Government of Maharashtra.

The case of the Petitioners has been founded on a Government Resolution dated 15th January 1965. By that resolution, Government has dealt with the question of revision of pay scales and other grievances of Tracers in the Agriculture Department who had submitted that they lack adequate opportunities for promotion. By the G.R. dated 15th January 1965 Government determined that it was not necessary to sanction any revision of pay scale for Tracers and that their grievance would be redressed considerably if the existing posts of Tracers in the Agriculture Department are treated as part of the Clerical Cadre for the purposes of promotion. Consequently, directions were therefore, issued for fitment and seniority. This G.R. ex-facie treated the Tracers as a part of the Clerical Cadre of the Agriculture Department for the purposes of promotion. In the affidavit in reply that has been filed in these proceedings by the Deputy Secretary in the Agricultural, Animal Husbandry, Dairy Development and Fisheries Department, it has been stated that prior to 1965, there was no promotional avenue to tracers and

hence they came to be considered as a part of the Clerical Cadre (Senior Clerks and above) for **further promotions**. Some of the posts in the Tracers' Cadre were eligible to a special pay of Rs.25/- per month which was merged with the basic pay with effect from 1st January 1986 as recommended by the Fourth Pay Commission. By a G.R. dated 31st October 1998, the pay scales of Tracers and Assistant Draftsmen from the Public Works Department came to be revised from 1st January 1996 as follows :

"Cadre	Existing pay scale	Revised pay scale.
Tracer	975-1540	1200-2040 After 7 year service.
Asstt. Draftsman	1200-2040	1400-2300 After 5 years service.
Draftsman	1400-2300	1600-2660 After 4 years service."

The same pay scales were sanctioned to Tracers and Draftsmen in the Agriculture Department by a G.R. dated 15th January 1999. It has been stated that though there were 2448 Tracers, they had only 39 promotional posts of Draftsmen available in the Department and hence promotional avenues in the cadre of Senior Clerk and Assistant Superintendent came to be provided. Government has stated that Recruitment Rules for the posts of

Tracers are different from those of clerks and the duties and responsibilities of the posts of clerical staff and of tracers are different. Since the duties and responsibilities, pay scales and Recruitment Rules are different, it has been submitted that there is no merit in the contention urged on behalf of the Petitioners. On the other hand, it has been stated that the representation made by the Association was considered by the Government which came to the considered view that it could not be accepted from the point of view of the Clerical Cadre of the Agriculture Department and the Clerical Cadre of the other Departments of the Government. Hence, Government decided that it would not be possible to accept the plea for higher pay scales to the employees of the Clerical Cadre in the Agriculture Department, at par with Tracers.

The Tribunal has, in the course of its decision, adverted to a judgment of a Division Bench of this court dated 26th October 1990 in Writ Petitions 382 of 1986 and 1975 of 1989 which were moved by the Association of Ministerial Services in the Agricultural Department of the State Government. One of the submissions which fell for consideration before the Division Bench was the effect of the G.R. dated 15th January 1965. The Association had

submitted before the Division Bench that the GR had the effect of merging the cadre of Clerks and Tracers. That submission was specifically rejected by the Division Bench with the following observation:

“In the first instance the contention of the learned Counsel that the two cadres of clerks and traces are merged by resolution dated January 15, 1965 is wholly incorrect. As mentioned hereinabove the resolution merely enables the tracers to be considered as part of clerical cadre for the purpose of promotion and for no other purpose. It is not in dispute that the qualifications to the appointment of the posts of clerk and tracer are different and the nature of duties performed by members of the two cadres are also separate and distinct. The clerks are required to perform clerical duties while tracers are required to do any technical work of arduous nature in addition to performing clerical duties. It is therefore, futile to suggest that the two cadres were merged by the resolution dated January 15, 1965. As the two cadres are not merged and are separate, there cannot be any complaint that pay scales of the two cadres should not be separate. The nature of duties performed by the members of the two cadres are different and reliance on the doctrine of same pay same wages has no application whatsoever to the facts of the case. The pay scales are fixed by rules framed under Proviso to Article 309 of the Constitution of India and we are unable to find any merit in the contention that the revised pay scales of clerks and tracers should be identical.”

The judgment of a Division Bench in the earlier case, provides a clear answer to the submission which has been urged before us and the Tribunal was, therefore, justified in relying on the decision.

That apart, we are entirely in agreement with the view of the Tribunal that the pay scales of the respective cadres have been fixed taking into account the recommendations of the Pay Commission which had gone through the duties and responsibilities of the concerned cadres. It is a well settled principle of law that matters relating to equation of posts involve expert determination. In the present case, as the judgment of the Division Bench of 26th October 1990 found, the qualifications for appointment to the posts of clerk and tracers are different, the nature of duties performed are different and there was no merger of the two cadres. The plea for equation of pay scales based on the doctrine of equal pay for equal work was hence without basis. The plea was also rejected by the Division Bench of this Court. Therefore, having considered the matter from all its perspectives and for the aforesaid reasons, we do not find any merit in the petition. The petition shall accordingly stand dismissed.

CHIEF JUSTICE

